

1984 WL 249816 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 31, 1984

*1 Jeff Lee

Office of the Honorable Robin Tallon

Post Office Box 6286

Florence, South Carolina 29503

Dear Mr. Lee:

By our telephone conversation of Wednesday, **January 25, 1984**, you requested an opinion whether one person simultaneously serving on the Timmonsville City Council and the Florence County Planning Commission would contravene the dual office holding provisions of the Constitution of the State of South Carolina. For the reasons set forth below, I would advise that one person serving in both positions would contravene the dual office holding provisions.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that ‘. . . no person shall hold two offices of honor or profit at the same time.’ For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw](#), 274 S.C. 475, 266 S.E. 2d 61 (1980).

In several prior Opinions of the Attorney General, it has been held repeatedly that a member of a city council is an officer. See, for example, Opinions dated July 8, 1982; September 7, 1982; and June 18, 1982 (copies enclosed).

This Office has also held that members of various planning commissions are officers for the purposes of dual office holding.¹ This Office has not previously had an opportunity to consider whether a member of the Florence County Planning Commission would occupy an office, however.

The Florence County Planning Commission was created by Act No. 904, 1966 Acts and Joint Resolutions, which Act was amended by Act No. 252, 1967 Acts and Joint Resolutions. Subsequent to the implementation of Home Rule and pursuant to [Section 6-7-320, Code of Laws of South Carolina \(1976\)](#), Florence County Council enacted Ordinance No. 7-⁸¹/82, now codified as Title XI, Article II of the Florence County Code, creating the Florence County Planning Commission. It should be noted that the provisions of the Florence County Code closely track the provisions of the local legislation enacted by the General Assembly, particularly with regard to the Commission's powers and duties. Membership on the Commission is governed by the Florence County Code, Article IV; members are appointed by Florence County Council.

A review of the powers and duties of the Florence County Planning Commission leads to the conclusion that a member of the Commission would be exercising a portion of the sovereign power of the State. Under Section 253 of Title XI, Article II of the County Code, the following duties and powers are prescribed:

(c) Plan, prepare and keep up to date a program of public works and budgets therefor, including but not limited to water and waste or sewage disposal programs, particularly in rural areas, and to that end the various officials, departments and agencies of the county shall cooperate with the commission;

*2 (d) Prepare, either through its own officers and agents or by contract with firms or individuals, a comprehensive plan for Florence County, which will encompass water and sewer facilities, recreational facilities, private developments for residential, agricultural, commercial and industrial uses, and which will promote the general health and welfare of the county, encourage the distribution of population, and set forth classification of land uses as will tend to facilitate adequate provisions for a water supply and sanitation, . . . ;

(f) In general, to have such powers as may be appropriate to enable it to fulfill its functions and duties, to promote planning, and to carry out the purpose of this act.

The Commission may also have additional duties conferred upon it from time to time by Florence County Council. See, Section 251 of Title XI, Article II, County Code. In addition, many sections within Chapter 7 of Title 6 of the South Carolina Code specify other powers of local planning commissions in general; for example, see Sections 6-7-340, -570, -720, -1030, -1040, and - 1050. Thus, the Commission may be said to exercise a portion of the sovereign power of the State.

A member of the Commission has a tenure of **four** years. He takes no oath and does not receive a salary. The only specific qualification for appointment to the Commission is that the appointee be a resident of the County Council district from which he is appointed.

Considering all of the above factors, it is the opinion of this Office that a member of the Florence County Planning Commission would probably hold an office for the purposes of dual office holding. One who would hold that position while serving on a city council would probably contravene the dual office holding provisions of the Constitution of South Carolina.

If we may be of further assistance in this matter, please advise us.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

- 1 Prior Opinions are dated March 29, 1982 (Lexington County Planning Commission); **January** 7, 1980 and April 28, 1982 (Beaufort County Joint Planning Commission); April 7, 1977 (Williamsburg County Planning Commission); June 24, 1982 (Horry County Planning Commission); and December 31, 1980 (Charleston County Planning Board).

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